

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 489)**

**INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on November 2, 2006, from Mr. Ric Morrison, Production Coach, Sunset Moulding Company (Petitioner). The Petitioner requests the Board to amend Title 8, California Code of Regulations, Section 3650, Industrial Trucks, regarding the blue flag/blue light requirement.

Labor Code section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

**SUMMARY**

The Petitioner's company, Sunset Moulding Company, is involved in loading and unloading railroad cars. The Petitioner notes that General Industry Safety Order (GISO), Section 3650(t)(23) pertains to the use of blue flags or blue lights during loading or unloading of rail cars. This standard states that blue flags or lights are to be displayed in accordance with standards promulgated by the California Public Utilities Commission (CPUC). The Petitioner contacted the CPUC and learned that the CPUC does not promulgate standards for blue signals.

The Petitioner requests that Section 3650(t)(23) Industrial Trucks, pertaining to the use of blue flags or blue lights, be amended to match the practice of the industry and the CPUC, or the CPUC should amend their General Orders (GO) to be consistent with Title 8 standards. The Petitioner contends that since the CPUC does not promulgate blue signal standards, employers who load and unload railcars are confused as to what blue signal standards they are to comply with. Consequently, the Petitioner questions the necessity of Title 8 blue signal standards and believes this standard serves no useful purpose.

**DIVISION'S EVALUATION**

The Division's evaluation report dated January 24, 2007, states the Division does not support granting the Petitioner's request to harmonize the Title 8 standard with the CPUC practices.

The standard currently provides for the safety of workers by preventing the movement of railcars

during loading and unloading operations. This protection is afforded by three measures specified in Section 3650(t)(23):

1. car brakes shall be set;
2. wheel chocks or other positive stops shall be used; and
3. blue flags or blue lights shall be displayed.

As stated in the October 31, 2006, email reply to the Petitioner from George Elsmore, Manager, Railroad Operations Safety Branch, CPUC, the purpose of the blue signal is to alert operators of rolling equipment that workers are on, under, or around the protected equipment. This blue signal indicates to rail workers that the protected equipment is not to be coupled with other cars, equipment or locomotives, or otherwise disturbed in any way that would cause the car to move.

The purpose of Section 3650(t)(23) is to afford equivalent protection to workers at industrial sidings or industrial railway systems which are beyond the jurisdiction of the CPUC. This subsection adopts the standardized signaling recognized throughout the railway transportation industry, and requires no other special notice or training of rail workers to effectively accomplish the desired warning.

The Division proposed changes to the language of Section 3650(t)(23) to require blue signal protection of workers in conformance with the requirements of Section 3333 and 49 California Code of Regulations (CFR) Part 218.27.

#### STAFF'S EVALUATION

Board staff reviewed applicable Title 8 sections, federal OSHA standards, and standards developed by the Burlington Northern and Santa Fe Railways (BNSF) which address blue signal protection for workers based upon CFR Title 49, Subpart B, "Blue Signal Protection of Workers," Part 218.7, and discussed industry, federal and state standards with the CPUC. The CPUC confirmed that it does not promulgate blue flag/blue light requirements. The CPUC General Order 108 only requires railroads under the CPUC's jurisdiction to post their standards, any changes and reissues, whole or in part, with the CPUC.

The Division's Policy and Procedures (P&P) Manual clarifies the Division's jurisdiction over railroads in P&P C-II which states in part:

2. *Compliance personnel shall refer all complaints and accidents involving the following to the appropriate federal agency or department (see P&P C-90)*

a. *US. of California Army National Guard or U.S. or California Air National Guard;*

b. *Railroad operations;*

*EXCEPTION: The Division has jurisdiction over the safety and health of railroad employees in offices and shops devoted to the construction, maintenance or repair of railroad equipment. The Division also has occupational health jurisdiction over all other railroad employees and has traditionally asserted safety jurisdiction over all other*

*railroad employees under Labor Code Sec. 63 03 (a) as long as no other federal or state agency is actively exercising safety jurisdiction. Compliance personnel shall contact the Legal Unit before asserting jurisdiction over railroad employees who do not work in offices or shops.*

While the Division has jurisdiction over the Petitioner's employees, the Federal Railroad Administration (FRA) and the CPUC exercise safety jurisdiction in California over common carrier railroad employees. Board staff recognizes that Section 3650(t)(23) is inaccurate and misleading by stating that employers are to comply with blue signal, blue light standards promulgated by the CPUC and agrees with the Petitioner that Section 3650(t)(23) should be amended to address this inconsistency.

The Petitioner should be aware of other blue flag/blue light requirements in Section 3333, Blue Stops Signs, a vertical standard that states in relevant part:

*"(a) The employer shall provide blue stop signs for use by day, and in addition, blue lights for use if night work is necessary, and cause them to be displayed before employees are permitted to work in, upon, or under any standing railroad car or cars under conditions where unanticipated movement or disturbance of such car or cars might endanger employees or equipment.*

This standard also contains detailed requirements on securing railcars; using blocks and chocks; and the use, care, maintenance, placement and design of required signs and signals, including blue stop signs. An exception statement follows Section 3333(a) which states that railroad cars on portions of industrial tracks served by common carrier railroad corporations shall be provided with protective signs and lights as required by the railroad's operating rules filed with the CPUC pursuant to GO 108. Board staff believes that in the interest of clarity, Section 3333 should be cross-referenced in Section 3650(t)(23).

The FRA is the governing authority for railroads in all 50 states. This act is separate from federal OSHA and it provides the operating and safety rules for common carrier railroads. Section 3650 and Section 3333 provide safety for employees not covered under the FRA that are exposed to the same hazards as railroad employees. By cross-referencing Section 3333 standards with Title 49 FRA standards in Section 3650(t)(23), workers who may be exposed to the hazard of inadvertent railcar movement during loading and unloading operations will be protected.

Title 8 blue signal standards, universally recognized by common carrier railroad workers under the CPUC's jurisdiction, also should be understood by workers under the jurisdiction of the Division who work on railcars. These workers should be trained to use and recognize blue stop signs and blue lights in accordance with Section 3203, Injury Illness Prevention Program while loading and unloading railcars. Knowledge of these standards protects workers from the hazard of inadvertent railcar movement.

Board staff recommend that the Petitioner's request be granted to the extent that Title 8, Section 3650(t)(23) be amended to clarify the specific standards that address blue signal protection for workers.

§ 3650. Industrial Trucks. General.

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(t) Industrial trucks and tow tractors shall be operated in a safe manner in accordance with the following operating rules:

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(23) To prevent railroad cars from moving during loading or unloading operations, the car brakes shall be set, wheel chocks or other recognized positive stops used, and blue flags or blue lights displayed in accordance with ~~applicable regulations promulgated by the Public Utilities Commission~~ the requirements of Section 3333 of these Orders and applicable portions of the Federal Railroad Administration. Code of Federal Regulations. Title 49. Subpart B. Part 218.27. "Blue Signal Protection of Workers" which is hereby incorporated by reference.

### CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Mr. Ric Morrison, Production Coach, Sunset Moulding Company, to make changes to Section 3650, Industrial Trucks, regarding the blue flag/blue light requirement. The Board has also considered the recommendations of the Division and Board staff. For reasons stated in the preceding discussion, the Petition is hereby GRANTED to amend Title 8, Section 3650.